

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)

Angel Vera-Maury)
Licensee of WRSS(AM))
San Sebastian, PR)
Facility ID # 499971)

File Number: EB-05-SJ-013
NAL/Acct. No.: 200532680003
FRN: 0004065629

FORFEITURE ORDER

Adopted: August 29, 2005

Released: August 31, 2005

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of five thousand six hundred dollars (\$5,600) to Angel Vera-Maury, licensee of station WRSS(AM) in San Sebastian, Puerto Rico, for willful violation of Section 73.49 of the Communication’s Rules (“*Rules*”).¹ The noted violation involves Mr. Vera-Maury’s failure to enclose the station’s antenna structure within an effective locked fence or other enclosure.

II. BACKGROUND

2. On April 8, 2005, resident agents from the San Juan Office of the Enforcement Bureau (“*San Juan Office*”) informed the contract engineer for station WRSS(AM) that they would be conducting an inspection of the station’s transmitter site later that day. The contract engineer stated that the agents would find an opening in the base fence surrounding the station’s transmitter.

3. Still on April 8, 2005, the agents conducted an inspection at the studio and transmitter site for station WRSS(AM) in San Sebastian, Puerto Rico. The agents found an opening in the fence surrounding the base of the antenna that would allow access to the base. The agents also observed that the perimeter property fence did not have a working gate. The gate for the property fence was lying to the side of the access road on an angle and was not in use.

4. On May 18, 2005, the San Juan Office issued a *Notice of Apparent Liability for Forfeiture* to Mr. Vera-Maury in the amount of seven thousand dollars (\$7,000) for the apparent willful violation of Section 73.49 of the Rules.² On June 15, 2005, Mr. Vera-Maury submitted a response to the *NAL* requesting a reduction or cancellation of the proposed forfeiture.

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section

¹47 C.F.R. § 73.49.

²*Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200532680003 (Enf. Bur., San Juan Office, May 18, 2005) (“*NAL*”).

503(b) of the Act,³ Section 1.80 of the Rules,⁴ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining Mr. Vera-Maury's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁵

6. Section 73.49 of the Rules requires that antenna towers having radio frequency potential at the base must be enclosed within effective locked fences or other enclosures. Individual tower fences need not be installed if the towers are contained within a protective property fence. On April 8, 2005, station WRSS (AM)'s antenna structure was not enclosed by an effective locked fence or other enclosure. The contract engineer for the station informed the agents of this fact prior to the inspection. The agents observed a gap in the fence surrounding the base of the structure that would allow access to the base of the transmitter. Moreover, the antenna structure was not contained within a protective property fence. The agents observed that the gate for the property fence was broken and lying to the side of the access road, thus allowing unimpeded access to the property. Mr. Vera-Maury does not deny any of these facts. Thus, based on the evidence, we find that Mr. Vera-Maury willfully⁶ violated Section 73.49 of the Rules by failing to enclose his station's antenna structure within an effected locked fence or other enclosure.

7. Mr. Vera-Maury requests a reduction or cancellation of the forfeiture based on his good faith efforts to comply with the Rules. Mr. Vera-Maury asserts that arrangements were being made to replace the fence prior to the agents' inspection. He also claims that the fence was replaced immediately following the inspection.⁷ However, Mr. Vera-Maury failed to provide sufficient detail regarding his arrangements and was unable to produce any documentation of these arrangements. Moreover, the contract engineer for the station made no mention of any arrangements by the station to repair the fence when he noted that the agents would find a fencing violation. Accordingly, we find we cannot reduce the proposed forfeiture on the basis of good faith efforts to comply with the Rules.

8. We have examined Mr. Vera-Maury's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Mr. Vera-Maury willfully violated Section 73.49 of the Rules. However, consistent with Mr. Vera-Maury's claim, we reduce the proposed forfeiture to \$5,600 based on Mr. Vera-Maury's history of compliance with the Rules.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications

³47 U.S.C. § 503(b).

⁴47 C.F.R. § 1.80.

⁵47 U.S.C. § 503(b)(2)(D).

⁶Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁷The agents do not know whether Mr. Vera-Maury replaced the fence the day after the inspection. Regardless, Mr. Vera-Maury's remedial actions to repair the fence after the agent's inspection are expected and do not warrant a reduction in the forfeiture amount. See *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21861, 21864-75 (2002); *Sonderling Broadcasting Corp.*, 69 FCC 2d 289, 291 (1978); *Odino Joseph*, 18 FCC Rcd 16522, 16524, para. 8 (Enf. Bur. 2003); *South Central Communications Corp.*, 18 FCC Rcd 700, 702-03, para. 9 (Enf. Bur. 2003); *Northeast Utilities*, 17 FCC Rcd 4115, 4117, para. 13 (Enf. Bur. 2002).

Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Angel Vera-Maury **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five thousand six hundred dollars (\$5,600) for willfully violating Section 73.49 of the Rules.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.⁸ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

11. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Angel Vera-Maury at his record of address and to his attorney, Christopher D. Imlay, Booth, Freret, Imlay & Tepper, P.C., 14356 Cape May Road, Silver Spring, Maryland 20904-6011.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau

⁸47 U.S.C. § 504(a).

⁹See 47 C.F.R. § 1.1914.